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1 March 1974

MEMORANDUM FOR THE RECORD

SUBJECT: ICRC Meeting of 27 February 1974

1. The ICRC meeting was held in the Executive Office Building on Wednesday, 27 February 1974. Chairman Rhoads made a number of announcements:

a. He welcomed the new Justice representatives, Messrs. Greenwald and Marcuse.

b. He passed out two AEC documents which apparently are educational material for people in AEC who are concerned with classification problems. He commended these publications to all.

c. Chairman Rhoads and Bill Brown (Executive Director) reported on the progress in planning for the symposium ICRC plans by way of educating concerning the Executive Order. It is tentatively scheduled for 30 April. The date, however, is contingent on the schedule of the hoped-for principal speaker, the Vice President. It is to be in the auditorium at the Archives which holds slightly more than 200 people. There have been reports that the Department of Justice symposium on the Freedom of Information Act in December was too large (over 500 people). Speakers now scheduled include Mr. Liebling, Department of Defense, who will speak on the responsibilities of classifiers; Art Van Cook of Department of Defense, who will speak on how Defense educates its employees; Bill Blair, Department of State, a Deputy Assistant Secretary, who will speak on the Mandatory Review Process under the Executive Order; Charlie Marshall of AEC; Jim O'Neill of National Archives

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who will speak on ICRC; Bill Brown will discuss the quarterly report requirements under the Order; and Acting Attorney General Dixon will speak on the meaning of the Order and the Directive. In planning for this symposium, thought is also being given to the possibility of having smaller specialized sessions at a later time.

d. The subcommittee concerning reporting of classification abuses and the subcommittee concerned with foreign derived information have met and are continuing their work.

e. Chairman Rhoads referred to the Kissinger memorandum to State and Defense instructing them to make certain that foreign governments protect classified information received from us. He noted that some members of the subcommittee on foreign derived information believe that it may not be politic to raise this matter with foreign governments.

f. Bill Brown has been invited to speak before the International Studies Association on 22 March in St. Louis. This association was described as having some 9,000 members from academic, business and government circles and is a well-respected organization. Brown is also to speak before the National Classification Management Society in July at San Diego.

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g. Mr. Brown and [redacted] have met with the staffs of the Muskie and Moorhead subcommittees in connection with the requirements that ICRC testify before those committees. The plan is that Chairman Rhoads and Mr. Brown will testify before the Muskie group in April and the Moorhead group in June. The staffs have been given the names of the members of ICRC and it is expected the members also will be required to testify. Mr. Philips, the Moorhead Staff man, indicates they do not expect H.R. 12004 to progress very far this year but they do intend to have hearings. It was indicated that the staff people expressed great interest in the Data Index System but it also appeared that they were misinformed on the subject and have a greatly exaggerated view of its utility with respect to the Executive Order. The Congressional staff people in fact have an interest in the ultimate establishment of a government-wide Data Index System. At the hearings there will be interest in the quarterly reporting system as well as the mandatory review aspect of the Order. There will be inquiry concerning the extent to which departments are informing requesters their rights under the Order. The Congressional staff people are

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concerned with the size of the ICRC staff, which consists of Mr. Brown and his secretary. They were astonished to learn this and indeed spoke of having a staff of 600 people for the Classification Review Commission which would be established by H.R. 12004. Brown was not sure that the staff people were joking. The staff people are interested also in the use of such terms as "Eyes Only", "For Official Use Only", etc. They will also be interested in compartmentations systems. They are interested in the progress report of the ICRC committee and they were pleased that ICRC is planning a symposium.

h. Bill Brown indicated he is putting the progress report together and will send it to the members for comment. He is concerned that the figures reported to him as to the total number of documents being classified may be too low, in particular, CIA figures may be low. He is concerned also that the number of documents exempted from the General Declassification Schedule may be lower in some cases, citing in this instance, HEW.

i. Mr. Marshall wants to raise at a later meeting a matter considered some months ago, namely, the difficulties caused by the fact that only TS classifiers may exempt from the General Declassification Schedule.

2. With respect to the Minutes, I queried whether paragraph 8 is accurate. It had been my understanding that the subcommittee was to consider all of the reporting requirements beginning with the report of classification abuses. The Chairman indicated he thought paragraph 8 was accurate. The Minutes were then adopted.

3. DOD introduced a proposal concerning the Data Index requirements under the NSC Directive. Defense estimates that complete compliance with the requirement would cost Defense some \$20,000,000 - \$50,000,000 per year, this being additional to start up costs. Defense intends to do everything it can to comply but the monetary estimate is there and they do not think it likely that money in this amount can be obtained. This was discussed at some length. Everyone agreed that the benefits to be derived from the Data Index System are nowhere near worth the expenditure of sums in that amount. I suggested the possible desirability of requesting an amendment to the Directive. It was suggested also that if these cost estimates can be substantiated, the Moorhead Committee is apt to be sympathetic. The consensus essentially was that there was agreement that Defense has a real problem which will have to be tackled by the Committee, but consideration would be deferred until the symposium and the hearings before the Congressional committees are behind us.

4. A new business item, not listed on the Agenda, was introduced by Chairman Rhoads and referred to the Justice and NSC members for explanation. Essentially, it seems to be this. The President's Personal Representative for Micronesian Status Negotiations has asked OMB for classification authority under the Executive Order. OMB referred it to the Justice Department for preparation of an appropriate Executive Order. In considering the matter, Justice noted that the President, on the recommendation of ICRC, had issued an "Order" (not an "Executive Order") in September 1972, giving classification authority to certain departments and officials. It appears that the September 1972 order may be invalid under E.O. 11652, in view of provisions in the latter that certain implementing action may be taken only by "Executive Order", rather than by an "Order". Justice is concerned that the issuance of an Executive Order for the President's Personal Representative might tend to confirm the invalidity of the September 1972 Order. Bill Brown argued that the President's action in 1972 is proper because the President may implement his Executive orders by any means he chooses. Marvin Smith and Charley Marshall raised the question of whether ICRC should also require or attempt to require that ICRC pass on whether or not the President's Personal Representative needs classification authority. I suggested that the Committee regard that Justice make whatever legal ruling it deems proper and if the Justice action raises questions as to the validity of the September 1972 Order, we could then consider what to do about it. Chairman Rhoads expressed substantial agreement with this approach but it was not accepted. The Committee ultimately recommended that Justice attempt to solve the problem by means other than that of an Executive Order. In connection with the Smith-Marshall point, I detected no support for my own view, which is that ICRC should not attempt to pass on whether the President's Personal Representative needs classification authority. I think this question will come before the Committee in due course.



Associate General Counsel

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cc: OLC
[Redacted]
Inspector General
DD/M&S
Mr. Eisenbeiss, CRS